



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WILL WILSON  
ATTORNEY GENERAL**

December 9, 1959

Mr. Raymond W. Vowell  
Executive Director  
Board for Texas State  
Hospitals and Special Schools  
Box S, Capitol Station  
Austin, Texas

Opinion No. WW-756

Re: May the Board for Texas  
State Hospitals and Spe-  
cial Schools allocate  
money to the Harlingen  
State Tuberculosis Hos-  
pital for the payment of  
salaries for personnel  
engaged in a tuberculosis  
contact study.

Dear Mr. Vowell:

You have requested an opinion on the following  
questions:

- "1. May this Board allocate from the  
'Reserve Appropriation' indicated  
above to the Harlingen State Tuber-  
culosis Hospital money for the pay-  
ment of salaries of personnel engaged  
in the contact study, provided such  
salaries shall not exceed those stipu-  
lated in Section 2b of Art. II, H.B.4,  
supra?
- "2. If your answer to the above is in the  
negative, may any funds appropriated to  
this Board or the Harlingen State Tuber-  
culosis Hospital be used for such purpose?"

The "contact study" referred to in your first question  
is described in your request as follows:

"This Board in cooperation with private individuals and local governmental agencies has been conducting a case contact study in South Texas, but because of limited funds, have been forced to confine their activities to Willacy County. We have considered this program to be research designed to determine a more efficient method of hospitilization. Employees of the Harlingen State Tuberculosis Hospital have been contacting the families and immediate associates and friends of persons admitted from Willacy County to the Harlingen State Tuberculosis Hospital. Various tests have been made on these persons in an effort to determine whether or not they have become infected with tuberculosis and in need of care and treatment. This program has been highly successful and has resulted in the hospitilization of minimal cases, thereby reducing the overall costs to the State."

The Reserve Appropriation to the Board for Texas State Hospitals and Special Schools contained in House Bill 4, Acts of the Third Called Session of the 56th Legislature, Chapter 23, page 442 (General Appropriation Act), is made for the following purposes:

"There is hereby appropriated to the Board for Texas State Hospitals and Special Schools, for allocation by the Hospital Board to existing institutions under its jurisdiction for emergency purposes and for expenditure through contractual arrangements as hereinafter described, the sum of . . . ." (Emphasis ours).

The riders following this appropriation contain the following language:

"a. Upon a finding by the Hospital Board that an emergency need exists for the medical treatment, feeding, housing or care of patients or students at any institution under its jurisdiction as of September 1, 1959, said Hospital Board may allocate to and authorize expenditure by such institution any sum out of the reserve appropriation herein made.

"'Emergency purposes' and 'emergency needs' shall mean and include only unforeseeable conditions such as the purchase and use of more efficacious drugs that may become available for the treatment of patients or students, the purchase and preparation of food essential for feeding patients and students, the employment of physicians or nurses or attendants or other personnel for the treatment and care of patients which significantly exceed in number the patient-loads provided for in the regular appropriations to hospitals and special schools, or the repair or replacement of facilities damaged or destroyed by fire, flood, wind, or other unforeseeable disasters. It is not the intent of the Fifty-sixth Legislature that this reserve appropriation be expended for the general improvement of programs provided for in regular appropriations. (Emphasis ours).

"Approved allocations from this reserve appropriation may be expended for salaries and wages, including professional fees and services, only if such rates of expenditure are in accordance with Section 2b of this Article; for travel only in instances involving the transfer of patients; for drugs, hospital supplies, food, equipment, repairs, and construction only for emergency purposes and needs hereinabove described.

"b. Out of this reserve appropriation herein made, the Hospital Board may also pay for obligations incurred through contractual arrangements with local, community hospitals for the care or treatment of patients or students for which the Board for Texas State Hospitals and Special Schools is legally responsible, or for the provisions of diagnostic services, medical treatment, or custody of persons, as authorized by law; provided, however, that the rates of salaries and wages, or of professional fees and services, paid under such contractual arrangements shall not exceed those stipulated in Section 2b of this Article; and provided further that all such contractual arrangements shall have the advance, written

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approval of the Governor after obtaining the advise of the Legislative Budget Board."

It is noted from the above the the Reserve Appropriation is to be used for: (1) treatment of patients or students; (2) purchase and preparation of food essential for feeding patients or students; (3) the employment of personnel for the treatment and care of patients which "significantly exceed in number the patient-loads provided for in the regular appropriation" and (4) repair or replacement of facilities damaged or destroyed by unforeseen disasters.

The principles of statutory construction applicable to your request are stated in 39 Texas Jurisprudence 188-189, Statutes, Section 100, as follows:

"The maxim Expressio unius est exclusio alterius (the expression of one thing is exclusive of another) is said to be a logical, sensible and sound rule of construction; and it has been frequently applied in the construction of statutes as well as in the interpretation of other documents. The maxim signifies that the express mention or enumeration of one person, thing, consequence or class is tantamount to an express exclusion of all others. And when it is applicable, affirmative words imply a negative of what is not affirmed, negative words imply an affirmative of what is not negatived; and a provision limiting a thing to be done in a particular form or manner implies that it shall not be done otherwise."

Since the Legislature has specifically limited the Reserve Appropriation to the four purposes listed above, in answer to your first question, it is our opinion that the appropriation cannot be expended for the purpose of paying salaries of personnel to conduct the research study outlined in your request. We are supported in this view by the express language contained in the riders to the Reserve Appropriation wherein it is stated:

"It is not the intent of the Fifty-sixth Legislature that this reserve appropriation be expended for the general improvement of programs provided for in regular appropriations."

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None of the items of appropriation to the Board for Texas State Hospitals and Special Schools or the Harlingen State Tuberculosis Hospital are made for the purpose of carrying out the program outlined in your request. You are, therefore, advised that none of the funds appropriated to the Board for Texas State Hospitals and Special Schools or the Harlingen State Tuberculosis Hospital may be used for such purposes.

In this connection, House Bill 421, Acts of the 56th Legislature, Regular Session, 1959, Chapter 181, page 379 (Article 4477-11, Vernon's Civil Statutes) is a lengthy and detailed act for the control, care and treatment of tuberculosis, with the ultimate goal being the eradication of tuberculosis in Texas. Subdivision (b) of Section 4 of House Bill 421 reads as follows:

"All local health authorities shall keep a careful and accurate record of all cases of tuberculosis as reported to them with the date, name, age, sex, race, location, and such other necessary data as may be prescribed by the Texas State Department of Health. Such health authorities shall make a monthly report of all tuberculosis cases of which they may be cognizant to the Department before the fifth of the following month upon blank forms provided by the Department. These reports may be used by the Department for any and all purposes consistent with the care and treatment of individuals afflicted with tuberculosis, for research purposes, for statistical purposes, for investigative purposes, with the ultimate goal being the eradication of tuberculosis in Texas." (Emphasis ours).

Thus, the duty of carrying out the research program outlined in your request is placed in the Texas State Department of Health and the local health authorities; not the Board for Texas State Hospitals and Special Schools. The duty of the Board for Texas State Hospitals and Special Schools is to provide suitable facilities for persons found to be infected with tuberculosis in an infectious and contagious state and to provide hospitalization for those admitted to a State tuberculosis hospital. The appropriation to carry out such program is made to the Department of Health's appropriation contained in House Bill 4, Acts of the 56th Legislature, Third Called Session, 1959, rather than in the appropriation to the Board for Texas State Hospitals and Special Schools.

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SUMMARY

Neither the appropriation to the Board for Texas State Hospitals and Special Schools nor to the Harlingen State Tuberculosis Hospital nor the Reserve Appropriation to the Board for Texas State Hospitals and Special Schools may be used for the purpose of paying salaries of personnel to carry out a research program of testing the families, immediate associates and friends of individuals admitted from a particular county to the Harlingen State Tuberculosis Hospital.

Yours very truly,

WILL WILSON  
Attorney General of Texas

By   
John Reeves  
Assistant

JR:mfh

APPROVED:

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